United Nations S/2011/180

Security Council

Distr.: General
24 March 2011

Original: English

Letter dated 23 March 2011 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey to you a letter from the Chairperson of the African Union Commission, His Excellency Mr. Jean Ping (see annex I), requesting the transmission of the communiqué of the African Union Peace and Security Council dated 10 March 2011 (see annex II), and the report of the African Union High-Level Panel on Côte d'Ivoire, and enclosure (see annex III).

I would be grateful if you could bring the letter and its annexes to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex I

Letter dated 11 March 2011 from the Chairperson of the African Union Commission addressed to the Secretary-General

As you are aware, the 259th meeting of the Peace and Security Council (PSC) of the African Union (AU), held in Addis Ababa on 28 January 2011, established an AU High-Level Panel for the Resolution of the Crisis in Côte d'Ivoire. The Panel, comprising Presidents Mohamed Ould Abdel Aziz of Mauritania (Chair), Jacob Zuma of South Africa, Blaise Compaoré of Burkina Faso, Jakaya Kikwete of Tanzania and Idriss Déby Itno of Chad, as well as the President of the ECOWAS Commission, Mr. James Victor Gbeho, and myself, was mandated to evaluate the situation and to formulate an overall political solution to the crisis, on the basis of the relevant decisions of the AU and the Economic Community of West African States (ECOWAS).

After five weeks of work, which included a number of meetings, and consultations with the Ivorian parties, the Panel submitted its report to the 265th meeting of the PSC, held in Addis Ababa on 10 March 2011. I am attaching, herewith, the Arabic, English and French versions of the report, together with its annexes, including the report of the Team of Experts that supported the Panel, following its visit to Côte d'Ivoire in early February 2011, the various communiqués issued regarding the work of the Panel and the proposals for an overall political solution to the crisis.

I am pleased to inform you that the PSC endorsed the recommendations of the High-Level Panel as contained in its report, as well as the proposals made for an overall political solution to the crisis in Côte d'Ivoire. As requested by the PSC, I am in the process of appointing a High Representative for the implementation of the overall political solution, as endorsed by Council. His immediate task will include the convening, within the next two weeks, under the auspices of the AU and ECOWAS, of negotiations between the Ivorian parties to develop modalities for the implementation of the proposals submitted by the High-Level Panel.

I would like to seize this opportunity to express to you the AU's sincere gratitude for the support you extended to the Panel, in particular through your Special Representative for West Africa, Ambassador Said Djinnit.

I would be most grateful if you could transmit a copy of this letter, as well as the report of the High-Level Panel and its annexes, to the members of the Security Council for their information and action as appropriate.

I have no doubt, as we pursue our efforts to ensure a quick resolution of the crisis, that we can continue to rely on your support and that of the Security Council.

(*Signed*) Jean **Ping**

Annex II

Communiqué of the 265th meeting of the Peace and Security Council

The Peace and Security Council of the African Union (AU), at its 265th meeting, held on 10 March 2011, at the level of Heads of State and Government, adopted the following decision on the situation in Côte d'Ivoire:

Council,

1. Takes note of the report of the High-Level Panel for the Resolution of the Crisis in Côte d'Ivoire, established pursuant to paragraph 6 of communiqué PSC/AGH/Comm(CCLIX) adopted its 259th meeting held on 28 January 2011 (Document PSC/AHG/2 (CCLXV)). Council also takes note of the statements made by President Alassane Dramane Ouattara and by the representative of His Excellency Laurent Gbagbo;

2. Reaffirms all its previous decisions on the post-electoral crisis facing Côte d'Ivoire since the second round of the presidential election, on 28 November 2010, recognizing the election of Mr. Alassane Dramane Ouattara as the President of the Republic of Côte d'Ivoire;

3. Commends the High-Level Panel for its commitment and the sustained efforts it has made in search for a peaceful resolution of the crisis in Côte d'Ivoire. In this regard, Council pays tribute to Presidents Mohamed Ould Abdel Aziz of Mauritania, Jacob Zuma of South Africa, Blaise Compaoré of Burkina Faso, Jakaya Kikwete of Tanzania and Idriss Déby Itno of Chad, as well as to the Chairperson of the AU Commission, Dr. Jean Ping, and the President of the Commission of the Economic Community of West African States (ECOWAS), Mr. James Victor Gbeho, for their contribution to the search for a solution to the current crisis in Côte d'Ivoire. Council also commends all those who have extended cooperation to the High-Level Panel in the discharge of its mandate. Council expresses its appreciation to the Secretary-General of the United Nations, Mr. Ban Ki-moon, for the support extended to the Panel, through his Special Representative for West Africa, Said Djinnit;

4. Expresses its grave concern at the rapidly deteriorating security and humanitarian situation since the announcement of the results of the second round of the presidential election. Council notes that, in the absence of a speedy solution to the crisis, Côte d'Ivoire is likely to sink into widespread violence, with incalculable consequences for the country, as well as for the region and the continent as a whole;

5. Reiterates its firm condemnation of all atrocities and other violations of human rights, threats and acts of intimidation, as well as acts of obstruction directed at the operations of the United Nations Operation in Côte d'Ivoire (UNOCI), and deeply regrets the loss of life and destruction of property that occurred in parts of Côte d'Ivoire;

6. Reaffirms its conviction that the post-electoral crisis in Côte d'Ivoire requires an overall political solution that preserves democracy and peace, and promotes lasting reconciliation among all Ivorians;

7. Endorses the recommendations of the High-Level Panel as contained in its report, as well as the proposals made for an overall political solution to the crisis in Côte d'Ivoire, which offer a viable basis for a way out of the crisis that reconciles respect for democracy and the quest for peace. In this regard, Council recalls the provisions of paragraph 6 (c) of the communiqué of its 259th meeting stating that the Panel's conclusions, as endorsed by Council, will be binding on all Ivorian parties;

8. Requests the Chairperson of the Commission to appoint a High Representative for the implementation of the overall political solution, as endorsed by Council, and to complete the process for a way out of the crisis as follows:

(i) convening, under the auspices of the AU and ECOWAS, within the next two weeks, of negotiations between the Ivorian parties to develop modalities for the implementation of the proposals submitted by the High-Level Panel as endorsed by Council, with all the necessary guarantees for all concerned actors, in particular for the outgoing President, H.E. Laurent Gbagbo,

(ii) mobilization of the support of AU partners for the early conclusion of the Agreement for a way out of the crisis, and

(iii) submission, to a meeting of Council, of a comprehensive report on the results of its efforts;

9. Calls upon the Ivorian parties to extend full cooperation for the effective implementation, within the agreed time frame, of the Panel's proposals, and to refrain from any action likely to complicate the situation and the process for a way out of the crisis;

10. Underlines its determination to take, in light of the results of the negotiations referred to in paragraph 8 (i) hereof, and on the basis of the relevant instruments of the AU, all measures that the situation would require;

11. Requests the Chairperson of the Commission to transmit this decision to the United Nations Security Council, ECOWAS and other AU partners;

12. Decides to remain actively seized of the matter.

Annex III

Report of the High-Level Panel of the African Union for the Resolution of the Crisis in Côte d'Ivoire

I. Introduction

1. This report presents the activities undertaken by the High-Level Panel of the African Union for the Resolution of the Crisis in Côte d'Ivoire, since it was established in January 2011. The report concludes with observations and recommendations on an overall political solution to the crisis.

II. Mandate of the High-Level Panel for the Resolution of the Crisis in Côte d'Ivoire

2. At its 259th meeting held at the level of Heads of State and Government, in Addis Ababa, on 28 January 2011, Council considered the situation in Côte d'Ivoire. In the communiqué adopted at the end of its deliberations, Council reaffirmed its previous decisions on the situation in Côte d'Ivoire, particularly the communiqué issued at the end of its 251st meeting held on 4 December 2010 and the communiqué of its 252nd meeting held on 9 December 2010, as well as the communiqués of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) of 7 and 24 December 2010, respectively, which recognized Mr. Alassane Dramane Ouattara as the President-Elect from the presidential election of 28 November 2010, on the basis of the results certified by the Special Representative of the United Nations Secretary-General, in conformity with Resolution 1765 of 16 July 2007 and the different Agreements signed by the Ivorian parties and endorsed by ECOWAS, the AU and the United Nations.

3. Having expressed its deep concern about the serious political crisis in Côte d'Ivoire since the proclamation of the results of the 2nd round of the presidential election, Council reaffirmed the need for a speedy and peaceful solution, which would make it possible to preserve democracy and peace through the respect of the will of the Ivorian people as expressed on 28 November 2010, and encouraged lasting reconciliation between all Ivorians through dialogue. In that regard, the PSC decided to establish, under the authority of the African Union, a High-Level Panel for the Resolution of the Crisis in Côte d'Ivoire under conditions that would preserve democracy and peace. Council decided that the Panel would operate as follows:

(a) the Panel would be assisted by a Team of Experts and would work, as and when necessary, in close cooperation with the AU's partners, particularly the United Nations;

(b) the Panel was mandated to evaluate the situation and propose, on the basis of the relevant AU and ECOWAS decisions, an overall political solution;

(c) the Panel would conclude its work within a period not exceeding one month and its conclusions, as would be endorsed by the PSC, would be binding on all the Ivorian parties with which they would have been negotiated (Annex I).

4. In the communiqué of the PSC, it was pointed out that the composition of the High-Level Panel would be finalized after appropriate consultations during the 16th Ordinary Session of the Assembly of the African Union, which was scheduled to hold in Addis Ababa, on 30 and 31 January 2011. Consequently and following the consultations, it was agreed that the High-Level Panel would comprise the Heads of State of the following countries: Mauritania (as the Chair of the Panel), Burkina Faso, Chad, South Africa and Tanzania, as well as the Chairperson of the African Union Commission and the President of the ECOWAS Commission.

III. Activities of the High-Level Panel

A. Inaugural meeting of the High-Level Panel

5. The High-Level Panel held its inaugural meeting on 31 January 2011 under the chairmanship of H.E. Mr. Mohamed Ould Abdel Aziz, President of the Islamic Republic of Mauritania, to agree on its work programme. The Panel decided to establish, within a period of three days, the Team of Experts provided for in the communiqué of Council. It also agreed that: (i) the Team would meet immediately in Addis Ababa to start preparatory work before undertaking a visit to Côte d'Ivoire with the same objective; (ii) the Team of Experts would submit the outcome of its work to the members of the High-Level Panel at a meeting to be held in Nouakchott; and (iii) the Panel would thereafter proceed to Côte d'Ivoire to meet the parties and submit to them proposals for a way out of the crisis. In the meantime, the Panel reiterated the appeal of the AU to all the Ivorian parties to exercise utmost restraint, to work to defuse tension and to cooperate fully with it, in order to facilitate the speedy resolution of the crisis faced by their country (Annex II).

6. In line with the communiqué of the inaugural meeting of the High-Level Panel, the Team of Experts was composed as follows:

- Amb. Ramtane LAMAMRA (AU Commission);
- Dr. Abdel Fatau MUSAH (ECOWAS Commission);
- Dr. Vincent ZAKANE (Burkina Faso);
- Amb. Cherif Mahamat ZENE (Chad);
- Prof. Cheikh Saad Bouh KAMARA (Mauritania);
- Dr. Slyabonga CWELE (South Africa); and
- Amb. David KAPYA (Tanzania).

B. Activities of the Team of Experts

7. The Team of Experts held its first meeting on 5 February 2011 under the chairmanship of the AU Commissioner for Peace and Security, Ambassador Ramtane Lamamra, who is responsible for the coordination of the Team of Experts. That meeting provided an opportunity for an in-depth exchange of views on the situation in Côte d'Ivoire and the different aspects of the crisis faced by that country.

8. At the end of that meeting, the Team of Experts issued the communiqué attached hereto (Annex III). In the communiqué, the Team indicated that it would undertake the visit to Abidjan from 6 to 10 February 2011, for consultations with the

stakeholders in order to prepare a report to be submitted to the High-Level Panel, at its meeting scheduled in Nouakchott. The Team of Experts seized the opportunity to reiterate the appeal made by the High-Level Panel to all the Ivorian Parties to show the greatest restraint, refrain from any action likely to further complicate the situation and to lend their full cooperation to efforts aimed at resolving the crisis quickly.

(a) Visit of the Team of Experts to Abidjan

9. The Team of Experts arrived in Abidjan on 6 February 2011 and departed on 10 February. During its stay, the Team met with the different Ivorian stakeholders and other actors, including representatives of the civil society, the private sector, religious bodies, traditional Chiefs, the diplomatic community in Abidjan, and the United Nations Operation in Côte d'Ivoire (UNOCI). Discussions with the different Ivorian stakeholders and other actors concerned focused on all aspects of the crisis, particularly the pre-electoral context and the overall evaluation of the peace process; the election; the security environment during the post-electoral period; the humanitarian and socio-economic situation; the media campaigns; the blockade of the Golf Hotel; and proposals for the resolution of the crisis.

10. The positions of the parties as stated during the visit of the Team of Experts may be summarized as follows:

(i) Pre-Electoral Context and Overall Evaluation of the Peace Process

11. The two camps gave contradictory assessments of the pre-electoral context and in general, of the peace process. For the *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* — The Rally of the Houphouëtistes for Democracy and Peace (RHDP), significant progress was made in the crisis exit process initiated by the different Agreements, making it possible to establish conditions conducive to the organization of the election. On the other hand, for the Presidential Majority (LMP), the conditions for a democratic election were not met, mainly because disarmament was not completed and the country was not reunited.

(ii) Election

12. All the actors concerned acknowledged that the 1st round of the election took place in satisfactory conditions. The 2nd round of the presidential election is, however, interpreted in a diametrically opposed manner.

13. *Voting on 28 November*: For the LMP, the 2nd round of voting in the Central-North Western (CNO) regions was a farce, considering the numerous irregularities that marked it, particularly the prevention of voting, violence against LMP representatives, stuffing of ballot boxes and the manipulation of the results. For its part, the RHDP denied all those allegations, and stressed that the election was held under good conditions in spite of the incidents noted in some areas, including those under the control of Mr. Gbagbo's camp. As for the other actors, particularly UNOCI, most of the national civil society organizations and the Diplomatic Corps accredited to Côte d'Ivoire, they all recognized that in spite of some shortcomings, the 2nd round was held under satisfactory conditions.

14. *Proclamation of the provisional results by the IEC*: The LMP affirmed that the Independent Electoral Commission (IEC) could not proclaim the results within the

period of three days provided for in the Electoral Code and was therefore foreclosed; it felt that the results were proclaimed in disregard of official procedure. Furthermore, according to the Representatives of the LMP, the results were neither consolidated nor validated by the IEC. Consequently, the results are null and void, since there were no official results. The RHDP pointed out that the IEC had worked under very difficult conditions, considering the curfew, the impediments to the proclamation of the results by Mr. Gbagbo's supporters in the IEC and the obstructive presence of Defence and Security Forces (FDS) on the IEC premises. It specified that the Electoral Code does not give a deadline for the proclamation of results, but rather for the transmission of the minutes to the Constitutional Council. Consequently, they felt that the Constitutional Council did not have any legal basis for declaring the IEC foreclosed.

15. *Proclamation of the final results by the Constitutional Council*: The Constitutional Council asserted that it had acted within the framework of legality. According to it, as the IEC had not transmitted the provisional results within the three days stipulated by Article 59 of the Electoral Code, it had to take matters into its hands, based on the Constitutional Council interpretation of that article. Furthermore, it explained that the partial cancellation of the vote in some districts of the North was done on the basis of the existence of a precedent during the 1995 presidential election. It justified the cancellation of the vote in a district that was not the subject of the complaint of candidate Gbagbo by virtue of its power of self-referral.

16. The Chairman of the IEC underscored the fact that the figures on which the Chairman of the Constitutional Council based the proclamation of the final results were the same as those announced by the IEC, which is evidence that the figures he had announced were authentic. For him, the Chairman of the Constitutional Council had simply made an "adjustment", after cancelling the vote in seven collation centres representing 13 districts and not 7 as initially announced. He only reversed the provisional results proclaimed by the IEC in favour of Mr. Gbagbo. In his certification, the Special Representative of the United Nations Secretary-General pointed out that the decision of the Constitutional Council did not correspond with the facts.

17. *Certification*: For the LMP, the certification of the 2nd round of the election was illegal because the Special Representative of the United Nations Secretary-General had acted in violation of his mandate and the Ivorian Constitution. As for the RHDP, it asserted that the certification emanated from the Agreements for a way out of the crisis concluded by the Ivorian parties, particularly the Pretoria Agreement of June 2005, as well as resolution 1765 (2007), which were incorporated into the Ivorian national law. UNOCI recalled that the Ivorian parties themselves were at the origin of the certification mandate of the United Nations through the two Pretoria Agreements. It stressed that it followed a standard certification process for the two rounds and that Mr. Gbagbo accepted the exercise for the 1st round, during which he came out first, and not for the 2nd round, which he had lost.

(iii) Post-Electoral Security Environment

18. Since the end of the 2nd round, the situation on the ground has deteriorated alarmingly, with the multiplication of acts of violence, including against the civilian

population, and the increased number of acts of obstruction faced by UNOCI. The latter submitted that many people had been killed, and several persons illegally arrested and detained, cases of disappearances and rape in the areas controlled by the Defence and Security Forces (FDS), as well as allegations of the existence of mass graves. It felt that the main acts of violence against civilian populations occurred in the areas controlled by the FDS, while observing the existence of acts of violence in the areas controlled by the *Forces Armées des Forces Nouvelles* — Armed Forces of the New Forces — (FAFN), particularly in the West. The RHDP attributed all those acts to the supporters of Mr. Gbagbo, while the latter considered that the violations of human rights were rather committed in the CNO regions.

(iv) Humanitarian and Socio-economic situation

19. As a result of the prevailing insecurity and tension, the humanitarian situation has considerably deteriorated, marked particularly by a flow of Ivorian refugees into Liberia and Guinea, the forced displacement of thousands of people within Côte d'Ivoire, and fleeing foreigners. The already difficult economic situation seriously has worsened, and the existence of two Governments considerably compounds the task of the private sector, which stressed that the situation had worsened because of the sanctions imposed on Côte d'Ivoire.

(v) Media Campaigns

20. Several NGOs that were met denounced what they called the hate messages propagated by the *Radiodiffusion Télévision Ivoirienne* (RTI). For their part, the LMP supporters denounced the impediments created by the Forces Nouvelles to the broadcast of the State media in the CNO areas, as well as the Radio and Television units illegally set up by them.

(vi) Blockade of the Golf Hotel

21. The RHDP called for the immediate lifting of the blockade of the Golf Hotel, in conformity with the appeal made by Council. The LMP is against the lifting of the blockade, arguing that heavily armed elements of the Forces Nouvelles have infiltrated the Hotel. The UNOCI Force Commander stated that there were between 100 and 200 armed elements of the FAFN on the premises of the hotel.

(vii) Proposals on the way out of the crisis

22. For the RHDP, Mr. Ouattara has won the presidential election and is therefore the legitimate President of Côte d'Ivoire. Consequently, the solution lies in the acceptance of the result of the election by Mr. Gbagbo. For the LMP, which stressed the need to recount the ballots, Mr. Gbagbo won the presidential election and is therefore the legitimate President of Côte d'Ivoire. The international community should therefore recognize this fact and lift all the measures taken against Ivorian personalities and entities. Other Ivorian stakeholders proposed, mainly, a compromise between the actors concerned, the respect of the results proclaimed by the IEC, an honourable exit for Mr. Gbagbo, the establishment of a High Council of the Republic, the disarmament of the former rebels, the restructuring of the IEC and the Constitutional Council, and the establishment of an independent "Truth, Justice and Reconciliation" Commission.

C. Subsequent activities of the High-Level Panel

(a) Second meeting of the High-Level Panel and visit to Abidjan

23. The High-Level Panel held its second meeting in Nouakchott on 20 February 2011. All members of the Panel attended the meeting during which the report of the Team of Experts that undertook a mission to Abidjan from 6 to 10 February 2011 was considered. Subsequently, the Panel undertook a visit to Abidjan from 21 to 22 February 2011. Due to the deterioration of the security situation in Côte d'Ivoire and the threats against a member of the High-Level Panel, President Blaise Compaoré, the latter could not travel to Abidjan. During its stay in Abidjan, the Panel met with representatives of the Ivorian parties at the highest level, as well as with the President and members of the Constitutional Council, and the Special Representative of the United Nations Secretary-General, Head of the United Nations Operation in Côte d'Ivoire (UNOCI).

(i) Meetings with Mr. Gbagbo and Mr. Ouattara

24. During the meeting with Mr. Gbagbo, the latter explained in detail his position as it had been expressed during the meeting with the Team of Experts. In essence, he emphasized that the conditions which prevailed during the 2nd round did not permit the conduct of elections in a transparent manner. He stated that the IEC did not reach a consensus on how to proceed and that the provisional results announced by its Chairman were done in disregard of the norms which govern the functioning of that institution. He contested the certification as made by the Special Representative of the United Nations Secretary-General, deeming it a breach of his country's sovereignty and calling into question the prerogatives of the Constitutional Council, the sole institution vested with powers to announce the final results of the election and whose decisions are final.

25. For his part, Mr. Ouattara, who was accompanied by his Prime Minister, Guillaume Soro, recalled the efforts made to hold the presidential election in a bid to extricate Côte d'Ivoire from the crisis in which it is. He emphasized that, even in the opinion of Mr. Gbagbo's camp, all conditions had been met for holding the election, as demonstrated by the signing by the President of the Republic of the decree to convene the electorate and the acceptance of the final electoral list. In fact, he added, Mr. Gbagbo began to change his views only when he learned of the early returns of the 2nd round. He recalled that the *Prefets* and officials of the FDSCI who had been deployed to the North had confirmed that the security conditions, on the day of voting, were appropriate. As a corollary, UNOCI, which had deployed over the entire Ivorian territory on the day of voting, had observed that a vast majority of the incidents recorded had occurred in the area controlled by Mr. Gbagbo. The Constitutional Council, which does not have the power to partially cancel the election, had made a political, and not a legal decision. The Constitutional Council had simply taken the same figures as those of the IEC and cancelled the results in several departments in the North so as to reverse the final results of the election.

(ii) Meeting with the Special Representative of the United Nations Secretary-General

26. During the meeting with the Special Representative of the United Nations Secretary-General, Head of UNOCI, the latter once again explained in detail the question of certification as contained in resolution 1765 (2007) of 16 July 2007 of

the United Nations Security Council. In that regard, he emphasized that the Ivorian parties themselves, including Mr. Gbagbo, are at the origin of the United Nations certification mandate as a result of the two Pretoria Agreements, which they signed on 6 April 2005 and 29 June 2005, respectively. Furthermore, it was in consultation with all Ivorian parties, as well as the other actors concerned, including the United Nations Security Council and the Facilitator, that he developed the framework, criteria and various stages of the certification process. He pointed out that it was on the basis of these elements that he had performed, on 12 November 2010, the certification of the 1st round of the presidential election held on 31 October 2010, to the satisfaction of all, including Candidate Gbagbo, who had the highest votes of this 1st round. As for the 2nd round, the Special Representative emphasized that he had made the same arrangements for observation and certification, namely, analysis of trends at the close of polling stations and analysis of all 20,000 reports from the 19 regions in Côte d'Ivoire. On that basis, it was clear as from 30 November that Mr. Ouattara had won the election with a margin of 8 per cent. For the Special Representative, there is no doubt that the results announced on 2 December 2010 by the IEC reflected the votes by the Ivorians, despite various incidents recorded over the entire territory which were not such that could affect the fairness of the voting and change the result. As for the incidents recorded on the day of voting, the Special Representative underscored that 90 per cent of these occurred in areas which were favourable to the outgoing president, and which were the only areas where human lives were lost.

27. He concluded by saying that, on the basis of his own independent, objective and thorough analysis of the 20,073 reports from the polling stations which he had received at the same time as the IEC, the Constitutional Council, the Facilitator and the candidates, the certification which he had announced on the 3 December 2010 well reflects the vote by the Ivorian people. For the Special Representative, the final results proclaimed on 3 December 2010, by the Constitutional Council did not correspond with the facts. He emphasized that, in compiling the results, he had taken into account all the claims made by Candidate Gbagbo. The Constitutional Council had gone beyond these claims in cancelling results in departments which had not been disputed by Mr. Gbagbo.

28. When asked exactly which results he had certified, the Special Representative specified that he had certified neither those of the IEC nor of the Constitutional Council, but rather the vote by Ivorians, on the basis of the same reports as those of the IEC and the Constitutional Council. Consequently, it was just sheer coincidence that his results were the same as those of the IEC.

29. Concerning reports which had not been signed by the representatives of Candidate Gbagbo, he pointed out that those represented only 10 per cent of all the reports, that is, about 2,000 of the 20,073, and accounted for 60,000 votes. In addition, he stated that according to the Ivorian Electoral Code, only the signatures of the Presiding Officer and returning officers of polling stations are mandatory for the report. He reaffirmed that, on the basis of reports from observers deployed by the United Nations and of information confirmed from several sources, the violence alleged by the Constitutional Council to annul nearly 570,000 votes in the North had rather been observed in the area controlled by Mr. Gbagbo's camp.

(iii) Meeting with the President and members of the Constitutional Council of Côte d'Ivoire

30. In his preliminary presentation to the High-Level Panel, the Chairman of the Constitutional Council, accompanied by all the members of that institution, affirmed that his jurisdiction, which is elections judge, had acted within the context of legality. According to him, since the IEC did not transmit the provisional results within the stipulated deadline of three days, according to his interpretation of Article 59 of the Electoral Code, it was up to the Constitutional Council to take matters into its hands. He indicated that he had been in constant contact with the Chairman of the IEC in order to consider together the way to proceed following the inability of the Commission to come to an agreement on the five regions that were the subject of the divergence, as well as with the Special Representative of the United Nations Secretary-General. He added that the IEC had the possibility of requesting for a 48-hour extension of the stipulated deadline. However, much to his surprise and while he was waiting for a telephone call from Mr. Bakayoko, he saw that the latter had proclaimed the results from the Golf Hotel. After that, he had no choice but to use the procedure of self-referral and declare the results proclaimed by the IEC null and void. He therefore concluded that on 3 December, on the basis of the 20,073 tally sheets, and reports on the organization of the election and complaints lodged by the candidate Laurent Gbagbo, the Constitutional Council proclaimed the final results of the Presidential election of 28 November 2010, declared the latter winner, and he was sworn in on 4 December.

31. The High-Level Panel considered it crucial to interact in a sustained manner with the Constitutional Council, as the organ having the final say on electoral matters. Hence the Panel requested a number of clarifications. It started by asking what is the legal nature of the results proclaimed by the IEC. In response, the Chairman of the Constitutional Council indicated that the results were only provisional and had to be confirmed by the Constitutional Council which is the sole organ empowered to proclaim the final results and name the winner of the election.

32. Regarding the question of why the Constitutional Council only proceeded with a partial cancellation of the vote relating to nearly 13.10 per cent of the votes cast, whereas Article 64, which applies in this case, provides for the cancellation of the entire vote and the holding of a new election, the Chairperson of the Constitutional Council replied that there was a precedent for partial cancellation drawn from the Presidential election of 1995. He justified the decision of the Constitutional Council to cancel the vote in the districts where there was no contestation by the candidate Gbagbo, by the authority of the Constitutional Council to pronounce itself on all the possible cases of irregularities when complaints are made, through a procedure of self-referral. Regarding the organization of new elections as prescribed by Article 64, he replied that since the irregularities only related to 13.10 per cent, it was not necessary to envisage such a procedure. According to him, a new election would have been organized if the irregularities related to 30 to 40 per cent of the votes. Concerning that question, a member of the Panel observed that the cancellation of 13.10 per cent of the votes by the Constitutional Council however had a decisive impact which completely changed the result of the polls.

33. In response to a question of the Panel on the nature of the violence and other incidents which led him to cancel the vote in some districts in the North of Côte d'Ivoire, the Chairman of the Constitutional Council indicated that he received

testimonies of rape and other acts of violence against women supporting the Presidential majority. A member of the Panel asked him how cases of rape could occur in a public place so frequented as a polling station on the day of voting. Referring to the cancellation of the vote, the Panel asked the Chairman of the Constitutional Council who would have been the winner of the election if the vote had not been cancelled in seven districts in the North. The Panel did not receive any formal response to these two questions. The Panel also asked the Constitutional Council to "read" the content of Article 59 of the Electoral Code. In response to this request, a member of the Council first and foremost gave the interpretation which the Council made of this Article which, according to him, clearly prescribes a deadline of three days for the IEC to transmit the results, without however providing for a specific deadline for the proclamation of the provisional results. A member of the Panel insisted on asking the Chairman and members of the Constitutional Council if they had adequately assessed the seriousness of their decision which was the cause of the unrest and the current crisis in which Côte d'Ivoire is struggling.

34. Regarding the issue of determining the means of resolving the crisis which the Constitutional Council could propose, the Chairman of the Constitutional Council underscored the need for Africans to respect the institutions which they have established. He finally renewed to the Panel his readiness to lend his contribution to the resolution of the crisis.

(b) Third meeting of the High-Level Panel

35. It should be recalled that during their stay in Abidjan, the members of the High-Level Panel also held consultations relating to the pursuit of their work, in particular the elaboration of proposals for a way out of the crisis, in conformity with their mandate. In this context, they agreed to convene their next meeting in Nouakchott.

36. Consequently, the High-Level Panel held its 3rd meeting in Nouakchott, on 4 March 2011. All members of the Panel participated in the meeting. The Panel made an in-depth assessment of the situation in Côte d'Ivoire on the basis of the interactions it had notably with Their Excellencies Laurent Gbagbo and Alassane Dramane Ouattara, during its visit to Abidjan from 21 to 22 February 2011, as well as the developments that have taken place since that date.

37. The Panel noted with deep concern the tragic evolution of the situation in Côte d'Ivoire, in particular the increasing number of losses of human lives, as well as the escalation of the spirit of confrontation. The Panel reiterated the AU's urgent appeal to the Ivorian parties to exercise utmost restraint, refrain from acts and steps likely to undermine ongoing efforts, including the media campaigns inciting hatred and violence. The Panel also called for an immediate end to killings and abuses that led to the loss of human lives, as well as demonstrations, marches and other activities likely to degenerate into disturbances and violence. It urged the parties to cease all forms of hostilities, and to lift the blockade imposed on the Golf Hotel.

38. The Panel agreed to convene its next meeting as soon as possible, in order to conclude the mandate entrusted to it by the Council. The Panel invited Their Excellencies Alassane Dramane Ouattara and Laurent Gbagbo, as well as the Chairman of the Constitutional Council of Côte d'Ivoire, to participate in that meeting. The Panel also contacted the President of the Federal Republic of Nigeria, Chairperson of the Council for the month of March 2011, for this organ to convene

immediately after its fourth meeting, at summit level, on the occasion of which it will submit a report on its activities and the results achieved.

39. In accordance with the conclusions of the 3rd meeting of the Panel, the Chairperson of the Commission paid a visit to Abidjan with a message from the Panel to Their Excellencies Laurent Gbagbo and Alassane Dramane Ouattara, as well as the Chairman of the Constitutional Council. The Chairperson informed them mainly of the invitation extended to them to interact with the Panel on the occasion of its 4th meeting and to participate in the meeting of the Council in order to express their positions and prospects regarding the resolution of the crisis in their country, particularly in the light of the proposals that will be made by the Panel to end the crisis.

(c) Fourth meeting of the High-Level Panel

40. The Panel held its 4th meeting in Addis Ababa, on 9 and 10 March 2011. On that occasion, the Panel adopted its report and agreed on proposals for a way out of the crisis to be submitted to the parties. The Panel interacted with President Alassane Dramane Ouattara, as well as with Mr. Pascal Affi N'Guessan, who represented H.E. Laurent Gbagbo. The President of the Constitutional Council did not travel to Addis Ababa to attend the meeting.

IV. Observations and recommendations

41. In the light of the foregoing information, the High-Level Panel makes the following observations and recommendations:

(a) The Panel stresses the urgent need for a speedy solution to the crisis to avoid a generalized conflict with incalculable consequences for Côte d'Ivoire, the other countries of the Region and the Continent as a whole.

(b) The Panel is aware that the AU and ECOWAS, as well as many international actors, including the United Nations, have already recognized the victory of Mr. Alassane Ouattara. It notes that the different international and national Observer Missions, as well as UNOCI, considered that most of the incidents recorded on the day of the voting, took place not only in the Northern and Central departments, but also and primarily in the Western region controlled by the supporters of Mr. Gbagbo. The Panel notes with interest that the certification carried out by the United Nations was done within the framework of the commitments made by Ivorian parties and was based on the reports forwarded to the IEC the Constitutional Council, the Facilitator and the Special Representative of the United Nations Secretary-General. In addition, the results obtained by the Special Representative on the basis of his own methods coincided with those of the IEC.

(c) The Panel notes that the partisan composition and the dysfunctioning of the IEC and the Constitutional Council have been the source of difficulties faced on the occasion of the proclamation of the results. In particular, the Panel finds the arguments presented by the Constitutional Council to be problematic: on the one hand, it is clear that the Constitutional Council has acted beyond its powers by partially cancelling the votes instead of nullifying totally and ordering the organization of a new election as prescribed by the Electoral Code — the argument according to which "if you can do more, you can do less", does not seem to be

appropriate in this specific case; on the other hand, it is worrying that the Constitutional Council annulled about 600,000 votes, just enough to reverse the results while maintaining that the incidents that took place were not of a nature to affect the outcome of the vote. These observations add to the fact that most of the incidents that took place were rather recorded in the area under the control of the camp of Mr. Gbagbo and that the Constitutional Council used its power of self-referral only in the areas favourable to Mr. Ouattara. The Panel is of the opinion that the decision of the Constitutional Council has not been taken with all the necessary precautions required by the fragile situation in Côte d'Ivoire.

(d) The Panel also notes that indeed, remarkable progress has been made in the peace process, but important aspects of the Ouagadougou Political Agreement (APO) and its Supplementary Agreements are still to be implemented. The implementation is crucial for the future stability of Côte d'Ivoire and the establishment of conditions conducive to the smooth organization of future elections.

(e) The Panel observes that the present crisis cannot be resolved on the sole basis of a mechanical application of the majority rule, more especially as the situation is tense on the ground and the positions are extremely polarized.

42. In the light of the foregoing, the Panel considers that it is important to work out a negotiated political solution, which can reconcile democracy and peace, to propose a global formula dealing with the post-electoral crisis on the basis of the decisions already taken by the AU and ECOWAS, and the implementation of the remaining aspects of the peace process. It should also include a set of measures aimed at building confidence and facilitating national healing and reconciliation in a society divided by more than a decade of crisis, instrumentalization of the identity issue and the exacerbation of fears and passions. Additionally and independently of the considerations arising from the electoral process, the Panel notes that Mr. Gbagbo had the privilege of presiding over the destiny of Côte d'Ivoire for a decade, which incidentally corresponds to two successive five-year terms of office, and is the maximum provided for by the Ivorian Constitution: in that capacity, he contributed what he could to promoting peace and reconciliation in his country. In that context, the Panel deems it is only natural that the process for a way out of the crisis be consolidated with the establishment of a Government of National Unity appointed by President Alassane Dramane Ouattara.

43. This solution is articulated in the attached Draft Proposals for an Overall Political Solution to the crisis in Côte d'Ivoire, which, in the view of the Panel, offers a viable basis for a political solution taking into account the concerns of the parties and the objective realities of the situation on the ground. This solution is resolutely in line with the relevant decisions of the AU and ECOWAS on Côte d'Ivoire. The Panel, therefore, recommends to the Council to endorse the five-point draft proposals revolving around: (i) the President of the Republic; (ii) the establishment of a Government of National Unity and Reconciliation; (iii) the implementation of the outstanding aspects of the Ouagadougou Political Agreement and other related reforms; (iv) national healing and confidence-building measures; and (v) assistance and support of the AU, ECOWAS and the international community. The Panel also recommends that Council urge the Ivorian parties to accept these proposals and to request the international community to support their implementation. The Council should consider specific measures, including

sanctions, against all those who reject these proposals and impede their implementation. The situation in Côte d'Ivoire is such that Africa must use all its weight to facilitate a political solution.

44. In conclusion, the Panel wishes to express its sincere gratitude to the Council and to the Assembly of the African Union for the trust placed in its members. The Panel also wishes to thank the Ivorian parties and all the other actors concerned as well as the different partners of the African Union for their availability. The Panel has endeavoured to carry out its mandate with the greatest objectivity and with the conviction that Africa cannot fail to fulfil the ardent aspiration of the Ivorian people for democracy and peace, in national unity and reconciliation.

Enclosure

Proposals for an overall political solution to the crisis in Côte d'Ivoire

Reaffirming the victory of Mr. Alassane Ouattara at the polls of 28 November 2010, a victory which was recognized by the resolutions/decisions of the Economic Community of West African States (ECOWAS), African Union (AU) and the United Nations, the AU High-Level Panel for the Resolution of the Crisis in Côte d'Ivoire makes the following proposals:

A. Presidency of the Republic

1. Mr. Laurent Gbagbo withdraws in the supreme interest of the Ivorian people and to safeguard peace.

2. The Ivorian Parties take note of the decision of Mr. Laurent Gbagbo.

3. The Ivorian Parties request the Constitutional Council to swear in Mr. Alassane Dramane Ouattara as the President of the Republic, within ...

B. Establishment of a Government of National Unity and Reconciliation

4. Appointment by President Alassane Dramane Ouattara, in consultation with the members of the Permanent Consultative Framework (PCF) of the Ouagadougou Political Agreement, of a Government of National Unity and Reconciliation.

5. Appointment by President Alassane Dramane Ouattara, in consultation with the members of the PCF, of a Prime Minister who will head the Government of National Unity and Reconciliation, with the participation of supporters of the outgoing President, Mr. Laurent Gbagbo, as well as representatives of the other Ivorian political parties and the civil society. Appointment, under the same conditions, of a Minister of Defence and a Minister of Interior.

6. Establishment by the Government of National Unity and Reconciliation of a National Security Council (NSC) to supervise the Disarmament, Demobilization and Reintegration (DDR) process and the establishment of the new national army.

7. Establishment by the Government of National Unity and Reconciliation of a High Council of the Republic (HCR), which will include the members of the PCF and other personalities, to steer and guide national reconciliation.

C. Implementation of the outstanding aspects of the Ouagadougou Political Agreement and other related reforms

8. Implementation, as a matter of priority, of the outstanding aspects of the peace process, in conformity with paragraph 8 of the communiqué of the 259th meeting of the Peace and Security Council (PSC), particularly the reunification of the country and the pursuit of the security sector reform process, with a view to unifying the

armed and security forces, in accordance with the provisions of the 4th Supplementary Agreement.

9. Reform of the normative and institutional framework governing elections, including the Independent Electoral Commission (IEC) and the Constitutional Council, on the basis of the broadest possible consensus and in close consultation with the HCR, building on the lesson learned from the difficulties faced in the functioning of the IEC and the Constitutional Council.

10. Organization of the legislative elections as soon as the reforms mentioned in paragraph 9 are completed.

D. National healing and confidence-building measures

11. Immediate adoption of all the necessary measures to promote calm, including:

- ensuring that the media that are under the control of the Parties refrain from disseminating messages instigating hatred and violence;
- lifting immediately the blockade of the Golf Hotel;
- putting in place a Truth and Reconciliation Commission to conduct a genuine national reconciliation process;
- adopting an amnesty law for all acts and offences committed in relation with the post-electoral crisis. This law should also provide for full immunity for all those who held the office of President of the Republic of that of Prime Minister, as well as senior officers of the Armed Forces and Security Services.

E. Assistance and support of the AU, ECOWAS and the international community

12. Lifting by the international community of all sanctions imposed on Côte d'Ivoire and Ivorian personalities, as soon as President Alassane Dramane Ouattara is sworn in.

13. Adoption by the international community, as a matter of urgency, of a support programme for reforms and socio-economic recovery in Côte d'Ivoire.

14. Strengthening by the African Union and ECOWAS of their presence in Côte d'Ivoire, including through the rapid deployment of a team of civilian and military observers, in order, in concert and in close collaboration with the United Nations Operation in Côte d'Ivoire (UNOCI), to monitor the implementation of an Agreement for a way out of the crisis.

15. Establishment of a Monitoring Committee comprising the AU, ECOWAS and the United Nations, as well as the Parties, with a view to monitoring the implementation of any Agreement they may conclude.